

or more recordable accidents within the 12 months before the safety audit. An urban carrier (a carrier operating entirely within a radius of 100 air miles) with a recordable rate per million miles greater than 1.7 will be deemed to have inadequate basic safety management controls for the accident factor. All other carriers with a recordable accident rate per million miles greater than 1.5 will be deemed to have inadequate basic safety management controls for the accident factor. The rates are the result of roughly doubling the United States national average accident rate in Fiscal Years 1994, 1995, and 1996.

(4) The FMCSA will continue to consider preventability when a new entrant contests the evaluation of the accident factor by presenting compelling evidence that the recordable rate is not a fair means of evaluating its accident factor. Preventability will be determined according to the following standard: “If a driver, who exercises normal judgment and foresight, could have foreseen the possibility of the accident that in fact occurred, and avoided it by taking steps within his/her control which would not have risked causing another kind of mishap, the accident was preventable.”

(k) *Factor Ratings.* (1) The following table shows the five regulatory factors, parts of the FMCSRs and HMRs associated with each factor, and the accident factor. Each carrier’s level of basic safety management controls with each factor is determined as follows:

- (i) Factor 1—General: Parts 390 and 387;
- (ii) Factor 2—Driver: Parts 382, 383, and 391;
- (iii) Factor 3—Operational: Parts 392 and 395;
- (iv) Factor 4—Vehicle: Parts 393, 396 and the Out of Service Rate;
- (v) Factor 5—Hazardous Materials: Part 171, 177, 180 and 397; and
- (vi) Factor 6—Accident: Recordable Accident Rate per Million Miles;

(2) For paragraphs IV (k)(1)(i) through (v) (Factors 1 through 5), if the combined violations of acute and or critical regulations for each factor is equal to three or more points, the carrier is determined not to have basic safety management controls for that individual factor.

(3) For paragraphs IV (k)(1)(vi), if the recordable accident rate is greater than 1.7 recordable accidents per million miles for an urban carrier (1.5 for all other carriers), the carrier is determined to have inadequate basic safety management controls.

(1) Notwithstanding FMCSA verification of the items listed in part III (a)(1) through (5) above, if the safety audit determines the carrier has inadequate basic safety management controls in at least three separate factors described in part IV, the carrier’s application for provisional operating authority will be

denied. For example, FMCSA evaluates a carrier finding:

(1) One instance of noncompliance with a critical regulation in part 387 scoring one point for Factor 1;

(2) Two instances of noncompliance with acute regulations in part 382 scoring three points for Factor 2;

(3) Three instances of noncompliance with critical regulations in part 396 scoring three points for Factor 4; and

(4) Three instances of noncompliance with acute regulations in parts 171 and 397 scoring four and one-half (4.5) points for Factor 5.

Under this example, the carrier will not receive provisional operating authority because it scored three or more points for Factors 2, 4, and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors.

[67 FR 12714, Mar. 19, 2002, as amended at 78 FR 58478, Sept. 24, 2013]

## PART 366—DESIGNATION OF PROCESS AGENT

Sec.

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AUTHORITY: 49 U.S.C. 13303, 13304, and 14704; and 49 CFR 1.87.

SOURCE: 55 FR 11197, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54707, Oct. 21, 1996.

EDITORIAL NOTE: Nomenclature changes to part 366 appear at 66 FR 49870, Oct. 1, 2001.

### § 366.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).

[55 FR 11197, Mar. 27, 1990. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49940, Sept. 24, 1997]

EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.1 was revised, effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

### § 366.1 Applicability.

The rules in this part, relating to the filing of designations of persons upon whom court or Agency process may be served, apply to for-hire and private motor carriers, brokers,

freight forwarders and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 387.319(a)).

#### § 366.2 Form of designation.

Designations shall be made on Form BOC-3, *Designation of Agent for Service of Process*. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.2 was revised, effective Apr. 25, 2016. For the convenience of the user, the revised text is set forth as follows:

#### § 366.2 Form of designation.

(a) Designations shall be made on Form BOC-3—Designation of Agents—Motor Carriers, Brokers and Freight Forwarders. Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier, broker or freight forwarder at its principal place of business.

(b) Private motor carriers and for-hire motor carriers engaged in transportation exempt from economic regulation by FMCSA under 49 U.S.C. chapter 135 that are registered with FMCSA as of October 22, 2013 must file a Form BOC-3 designation by no later than April 25, 2016. Failure to file a designation in accordance with this paragraph will result in deactivation of the carrier's USDOT Number.

#### § 366.3 Eligible persons.

All persons (as defined at 49 U.S.C. 13102(16)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

[55 FR 11197, Mar. 27, 1990. Redesignated at 61 FR 54707, Oct. 21, 1996; 62 FR 49940, Sept. 24, 1997]

EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.3 was revised, effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

#### § 366.3 Eligible persons.

All persons (as defined at 49 U.S.C. 13102(18)) designated as process agents must reside in or maintain an office in the State for which they are designated. If a State official is designated, evidence of his or her willingness to accept service of process must be furnished.

#### § 366.4 Required States.

(a) *Motor carriers*. Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers*. Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

[55 FR 11197, Mar. 27, 1990, as amended at 55 FR 47338, Nov. 13, 1990]

EFFECTIVE DATE NOTE: At 78 FR 52648, Aug. 23, 2013, § 366.4 was revised, effective Oct. 23, 2015. For the convenience of the user, the revised text is set forth as follows:

#### § 366.4 Required States.

(a) *Motor carriers*. Every motor carrier must designate process agents for all 48 contiguous States and the District of Columbia, unless its operating authority registration is limited to fewer than 48 States and DC. When a motor carrier's operating authority registration is limited to fewer than 48 States and DC, it must designate process agents for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers*. Every broker shall make a designation for each State, including DC, in which its offices are located or in which contracts will be written.

(c) *Freight forwarders*. Every freight forwarder shall make a designation for each State, including DC, in which its offices are located or in which contracts will be written.

#### § 366.5 Blanket designations.

Where an association or corporation has filed with the FMCSA a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Federal Motor Carrier Safety Administration by